

T. Saylor

Pages to follow

# United States Court of Appeals For the First Circuit

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No. 07-2467

UNITED STATES,

Appellee,

v.

HERIBERTO RODRIGUEZ,

Defendant, Appellant.

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Before

Lynch, Lipez and Howard,  
Circuit Judges.

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JUDGMENT

Entered: March 26, 2008

Appellant claims that the district court erred in finding, without benefit of a jury or an admission, that he had three prior convictions that qualified as predicates for application of the Armed Career Criminal Sentencing enhancement. 18 U.S.C. § 924(e). As appellant conceded both in the district court and in his brief on appeal, this argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), a decision by which this court is bound unless and until the Supreme Court holds to the contrary. United States v. Jimenez-Beltre, 440 F.3d 514, 520 (1st Cir. 2006) (en banc), cert. denied, 127 S.Ct. 1907 (2007).

The government's motion for summary disposition is granted.  
The judgment is affirmed. 1st Cir. R. 27.0(c).

By the Court:

Richard Cushing Donovan, Clerk.

**Certified and Issued as Mandate  
under Fed. R. App. P. 41.**

By: \_\_\_\_\_ Chief Deputy Clerk.

**Richard Cushing Donovan, Clerk**

*Kinda Byrne*  
**Kinda Byrne**  
**Deputy Clerk**

**Date:** APR 17 2008

[cc: Ms. Byrne, Ms. Chaitowitz, Mr. Bator and Mr. Casey]